

FINANCIAL ASSISTANCE MEMO

Financial Assistance Memo is issued by the Director, Policy Division, Office of Procurement and Assistance Policy

Subject: Treatment of Rebates and Utility Retroactive Discounts Earned under Energy Efficiency and Conservation Block Grants

References: 10 CFR Part 600 DOE Financial Assistance Regulations
P.L. 111-5 The American Recovery and Reinvestment Act of 2009 (Recovery Act)

When is this Financial Assistance Memo (FAM) effective?

This FAM is effective immediately.

When does this expire?

This FAM remains in effect until it is canceled.

Who is the Point of Contact?

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What is the Purpose?

This FAM provides guidance on the treatment of rebates and utility retroactive discounts (URDs) earned under the Energy Efficiency and Conservation Block Grant Program (EECBG), including both the formula EECBG awards and the competitive EECBG awards.

What is the Background?

All formula EECBG awards were made to State and local governments, and are covered by Subpart C of 10 CFR Part 600; competitive EECBG awards were made to State and Local governments, and also to non-profit entities which are covered by Subpart B. With regard to the treatment of rebates under financial assistance awards, 10 CFR 600.221(f)(2), states, “grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments”; 10 CFR 600.122(g) similarly states “recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds,

contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.”¹ The Special Terms and Conditions for DOE financial assistance awards include the following instructions in the “Payment Procedures” provision: *Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.*

Upon receiving the rebate, the Recipient must report the receipt of the rebate to DOE and adjust its next payment request and the Federal Financial Report to account for the rebate. This would affect reporting for incurred costs, but would not change the total project costs for the EECBG award. The recipient is able to increase the project impact and accomplish more effort without additional federal funding. 10 CFR 600.122 (g) and 600.221(f)(2) contemplate that rebates will be used similarly to program income in that recipients “shall disburse program income, rebates, refunds [...] before requesting additional cash payments.” At the end of the project, it is expected that all rebate funds would be re-dedicated to the project activities and DOE will not adjust the total project costs.

Note, rebates are not considered program income. 10 CFR 600.101 and 600.225(a) states that “program income” does not include rebates. Program income clearly reduces the total project cost unless the award provides otherwise. There is no such clear statement for rebates.

Questions have arisen from EECBG recipients, cognizant Project Officers, and Contracting Officers concerning (1) how should recipients treat rebates received after the project is complete (i.e., when there are no project costs to offset); and (2) how to distinguish utility retroactive discounts (URD) from standard rebates, and how should recipients treat URDs that are indirectly received as a result of a DOE funded project (e.g., a utility provides incentives for reaching a certain level of energy efficiency). To ensure consistency across the EECBG program and awards, it was determined that guidance was required.

What is the Guidance?

(1) How should the recipients treat rebates that are received during the project and after the project is complete (i.e., no project costs to offset) but before the award is closed by DOE?

Rebates consist of incentives received by the recipient or subrecipient that are directly traceable to a cost incurred under a DOE funded project (i.e., a recipient receives an incentive for purchasing a certain type of equipment or an incentive to defray the costs of installation). For example, a recipient purchases a solar hot water heater from a vendor for \$1500 under its federal award, and the recipient receives a rebate from the vendor of \$500 for purchasing the equipment. The \$500 rebate is directly traceable to a cost incurred under a DOE funded project and reduces the cost of the equipment; therefore, the recipient must credit the rebate amount to the federal award. Specifically, whether received during the project or after the project is complete, a rebate must be credited to the Federal Government as either a cost reduction or cash refund, as appropriate. (10 CFR §§ 600.221(f), 600.122; Appendix A to 2 CFR 225, Para. C.4; Attachment A to 2 CFR 230, Para. A.5; 48; *see also* 10 CFR § 600.317).

Recipients should first seek to apply the rebate to offset costs of the originally approved EECBG activity. The recipient may apply the rebate to pay down the financed portion of the project. The recipient could also use the rebate to expand the work being carried out under the existing activity to do additional work on previously approved tasks not adding new tasks requiring additional oversight and approval).

The monies received as rebate payments are subject to the same requirements as the project funds. If the recipient cannot use the rebate payment to offset the costs for the project as originally approved, and it is not feasible to expand the project to do additional work on previously approved tasks, the recipient may apply the rebate payments toward additional EECBG activities or new tasks approved by DOE and added to the existing EECBG activity. All activities funded with the rebate payments must comply with the EECBG Program and award requirements, NEPA, Historic Preservation and Recovery Act

¹ This guidance applies to prime recipients and subrecipients of DOE financial assistance awards. Other parties must comply with flowdown provisions and regulations applicable to their particular type of entity, including the appropriate sections of the DOE Assistance Regulations at 10 CFR 600 and the applicable cost principles.

requirements (e.g., expenditure deadlines; Davis Bacon Act and Buy American requirements).

(2) How are utility retroactive discounts (URD) distinguished from rebates? How should recipients treat URDs that are indirectly received as a result of a DOE funded project (e.g., a utility provides incentives for reaching a certain level of energy efficiency)?

URDs² consist of incentives where the recipient receives payment for achieving a certain level of performance that was reached indirectly as a result of the EECBG activity (e.g., the recipient implements a variety of energy efficiency retrofits to a building and DOE funded certain retrofits, and as a result of the energy efficiency savings, the recipient earns an incentive payment from the utility). A payment from a utility for achieving a certain level of energy efficiency or system performance would be considered a URD. The level of performance is often a result of a combination of measures, some of which are not funded by DOE, making it difficult to trace the portion of the measures that are attributable to the DOE portion of the project. Further, the URD is generally based on the actual or anticipated performance that will occur after the DOE project is completed.

Unlike rebates, URDs are not directly traceable to a cost incurred under a DOE funded project. URDs are further distinguished from rebates or credits because URDs do not offset the cost of the equipment or its installation. Instead, they are tied to the performance of the system or energy efficiency retrofits. Therefore, as an accounting matter, URDs do not meet the definition of “rebate” in OMB cost principles. Recipients do not have to account for them under the federal award under the OMB cost principles. The EECBG program has not established any additional requirements for accounting for this kind of incentive, and therefore, recipients are not required to account for URDs in their EECBG awards.

What Must Contracting Officers Do to Assure Compliance?

Contracting Officers should ensure that all staff reviewing Federal Financial Reports (SF-425), including cognizant Project Officers, make certain that the SF-425 properly accounts for rebates received for the EECBG award. Recipients should be advised of the difference between rebates and utility retroactive discounts to ensure that they are able to account for these items appropriately.

² Some refer to the utility retroactive discounts as “utility rebates”; however, the term “utility rebates” can create confusion in this context because often utilities also provide a variety of rebates in addition to utility retroactive discounts.